

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CARL S. FRYE,

Defendant-Appellant.

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UNPUBLISHED

March 18, 2003

No. 239334

Wayne Circuit Court

LC No. 01-005458-01

Before: Griffin, P.J., and Neff and Gage, JJ.

MEMORANDUM.

Defendant appeals as of right from nonjury convictions of attempted felonious assault, MCL 750.82; MCL 750.92, and possession of a firearm during the commission of a felony, MCL 750.227b. He was sentenced as an habitual offender, fourth offense, MCL 769.12, to 17 to 48 months on the assault conviction, to be served consecutively to the mandatory two-year sentence for felony-firearm. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

A challenge to the sufficiency of the evidence in a bench trial is reviewed de novo on appeal. *People v Sherman-Huffman*, 241 Mich App 264, 265; 615 NW2d 776 (2000), aff'd 466 Mich 39 (2002). This Court reviews the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could have found that each element of the crime was proved beyond a reasonable doubt. *People v Harmon*, 248 Mich App 522, 524; 640 NW2d 314 (2001). The trial court's factual findings are reviewed for clear error. A finding of fact is considered "clearly erroneous if, after review of the entire record, the appellate court is left with a definite and firm conviction that a mistake has been made." *People v Gistover*, 189 Mich App 44, 46; 472 NW2d 27 (1991). "An appellate court will defer to the trial court's resolution of factual issues, especially where it involves the credibility of witnesses." *People v Cartwright*, 454 Mich 550, 555; 563 NW2d 208 (1997).

Defendant contends that the evidence was insufficient to sustain the verdict as to the felony-firearm charge. The elements of felony-firearm are that the defendant possessed a firearm during the commission or attempted commission of any felony other than those four enumerated in the statute. MCL 750.227b(1); *People v Mitchell*, 456 Mich 693, 698; 575 NW2d 283 (1998). A firearm is defined as a "weapon from which a dangerous projectile may be propelled by using explosives, gas or air," excluding a BB gun. MCL 8.3t. Defendant argues that the evidence was insufficient to prove that he was in possession of a "firearm" because the witnesses could not

describe the gun, nobody identified it as to its caliber, means of propulsion or “the specific characteristics of the barrel,” and no gun was ever recovered.

Becky James and Lisa Wilson testified that they saw a gun in defendant’s hand, but it was too dark out for them to give a detailed description of the weapon. James said she saw flashes coming from defendant’s hand when the shots were fired and Barbara Broilo, a disinterested witness, confirmed hearing gunshots. Such evidence was sufficient to prove beyond a reasonable doubt that defendant was in possession of a firearm. *People v Perry*, 172 Mich App 609, 622-623; 432 NW2d 377 (1988). Admission of the weapon itself into evidence is not necessary to prove possession. *People v Hayden*, 132 Mich App 273, 296; 348 NW2d 672 (1984).

Affirmed.

/s/ Richard Allen Griffin

/s/ Janet T. Neff

/s/ Hilda R. Gage